

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs and Relator,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

ECF CASE

11 CIV. 0071 (PGG)

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

DEFENDANT’S PROPOSED VERDICT FORM

Pursuant to Federal Rule of Civil Procedure 49 and Section X.B of the Court’s Individual Rules of Practice for Civil Cases, Novartis Pharmaceuticals Corporation (“Novartis”) respectfully submits the following proposed verdict form. Novartis reserves the right to add, revise, or withdraw questions on this proposed verdict from before it is submitted to the jury.

VERDICT FORM

WE, THE JURY, UNANIMOUSLY FIND:

[Anti-Kickback Statute]

Question 1A: Have Plaintiffs proven by a preponderance of the evidence that Novartis knowingly and willfully violated the Anti-Kickback Statute by offering or paying bribes to doctors with intent to induce prescriptions of Novartis medications?

YES _____ NO _____

If you answered "no" to Question 1A, leave the remaining questions blank and proceed to page 5.

Question 1B: Have Plaintiffs proven by a preponderance of the evidence that the doctors they have identified who spoke at or attended Novartis promotional events knowingly and willfully violated the Anti-Kickback Statute by accepting bribes from Novartis in return for prescribing Novartis medications?

YES _____ NO _____

If you answered "no" to Question 1B, leave the remaining questions blank and proceed to page 5.

Question 1C: Have Plaintiffs proven by a preponderance of the evidence that any bribes that Novartis paid to doctors in violation of the Anti-Kickback Statute took the form of:

a. Honoraria to speakers in excess of fair market value

YES _____ NO _____

b. Meals at speaker programs and roundtables

YES _____ NO _____

c. Meals at in-office lunch-and-learns

YES _____ NO _____

Proceed to Question 2.

[FCA Counts — (a)(1)(A) and (a)(1)(B)]

Question 2: Have Plaintiffs proven by a preponderance of the evidence that the bribes Novartis offered or paid doctors proximately caused those doctors to prescribe any Novartis medications to their patients that were subsequently reimbursed by a government healthcare program?

YES _____ NO _____

If you answered “no” to Question 2, leave the remaining questions blank and proceed to page 5.

Question 3A: Have Plaintiffs proven by a preponderance of the evidence that a doctor they have identified who spoke at or attended Novartis promotional events made a false certification of compliance with the Anti-Kickback Statute that was material to Plaintiffs’ decision to pay?

YES _____ NO _____

If you answered “no” to Question 3A, leave Questions 3B and 3C blank and proceed to Question 4.

Question 3B: Have Plaintiffs proven by a preponderance of the evidence that Plaintiffs suffered damages as a result of Novartis’s conduct regarding any false or fraudulent claim?

YES _____ NO _____

Proceed to Question 4A.

[FCA Damages and Penalties]

If you answered “yes” to Question 3C, then answer Question 4A. Otherwise, leave this page blank.

Question 4A: For each category of activity that you found constituted a kickback in violation of the Anti-Kickback Statute in Question 1C, how many were in the form of:

- a. Honoraria to speakers in excess of fair market value

____ [Insert Number]

- b. Meals at speaker programs and roundtables

____ [Insert Number]

- c. Meals at in-office lunch-and-learns

____ [Insert Number]

Question 4B: Have Plaintiffs proven by a preponderance of the evidence and with reasonable certainty the amount of damages Plaintiffs sustained as a result of Novartis’s conduct in causing the submission of false or fraudulent claims for payment?

YES _____ NO _____

If you answered “no” to Question 4B, proceed to Question 5.

If Yes, enter the amount of damages that Novartis’s conduct caused the Government above what it would have paid absent Novartis’s conduct, for each category of activity that you found constituted a kickback in violation of the Anti-Kickback Statute in Question 1C:

- a. Honoraria to speakers in excess of fair market value

\$ _____

- b. Meals at speaker programs and roundtables

\$ _____

- c. Meals at in-office lunch-and-learns

\$ _____

[Common Law Unjust Enrichment]

Question 5: Have Plaintiffs proven by a preponderance of the evidence that Novartis was unjustly enriched?

YES _____ NO _____

If you answered “no” to Question 5, proceed to Question 6.

If yes, specify by how much Novartis was unjust enriched.

____ [Insert Number]

[State False Claims Act Claims]

Question 6: Have Plaintiffs proven by a preponderance of the evidence that Novartis provided doctors with remuneration with the intent to induce those doctors to write prescriptions of Novartis medications and that remuneration proximately caused those doctors to prescribe any of the Covered Novartis Medications that were subsequently reimbursed by a State Medicaid Program?

YES _____ NO _____

If you answered “Yes” to the above, proceed to question number 7.

If you answered “No” to the above, proceed to question number 10.

Question 7: Have Plaintiffs proven by a preponderance of the evidence that based on the remuneration provided to doctors, Novartis knowingly and willfully caused the submission of false or fraudulent claims for payment, or false statements material to a false or fraudulent Medicaid claim, to be made or used for any of the Covered Novartis Medications?

YES _____ NO _____

If you answered "No" to the above, proceed to question number 10.

Please indicate by placing a checkmark next to the State's name if you have determined that Novartis violated that State's False Claims Act by causing the submission of false or fraudulent claims to that State's Medicaid program.

_____ California	_____ Iowa	_____ New York
_____ Colorado	_____ Louisiana	_____ Nevada
_____ Connecticut	_____ Maryland	_____ North Carolina
_____ Delaware	_____ Massachusetts	_____ Oklahoma
_____ Dist. of Columbia	_____ Michigan	_____ Rhode Island
_____ Florida	_____ Minnesota	_____ Tennessee
_____ Georgia	_____ Montana	_____ Texas
_____ Hawaii	_____ New Hampshire	_____ Virginia
_____ Illinois	_____ New Jersey	_____ Washington
_____ Indiana	_____ New Mexico	_____ Wisconsin

Question 8: For each state that you checked in response to Question 7, have Plaintiffs proven by a preponderance of the evidence the specific number of meals or honoraria that proximately caused doctors to write prescriptions of Novartis medications reimbursed by a State Medicaid Program in violation of that State's False Claims Act?

YES _____ NO _____

If yes, please specify the number of meals or honoraria payments that proximately caused reimbursement by each State's Medicaid Program.

_____ California	_____ Iowa	_____ New York
_____ Colorado	_____ Louisiana	_____ Nevada
_____ Connecticut	_____ Maryland	_____ North Carolina
_____ Delaware	_____ Massachusetts	_____ Oklahoma
_____ Dist. of Columbia	_____ Michigan	_____ Rhode Island
_____ Florida	_____ Minnesota	_____ Tennessee
_____ Georgia	_____ Montana	_____ Texas
_____ Hawaii	_____ New Hampshire	_____ Virginia
_____ Illinois	_____ New Jersey	_____ Washington
_____ Indiana	_____ New Mexico	_____ Wisconsin

Question 9: Have Plaintiffs proven by a preponderance of the evidence and with reasonable certainty the amount of damages each State Government sustained as a result of Novartis' conduct in causing the submission of false claims for payment?

YES _____ **NO** _____

If yes, please enter the amount of damages Novartis's conduct caused each State Government above what it would have paid absent Novartis' conduct.

_____ California	_____ Iowa	_____ New York
_____ Colorado	_____ Louisiana	_____ Nevada
_____ Connecticut	_____ Maryland	_____ North Carolina
_____ Delaware	_____ Massachusetts	_____ Oklahoma
_____ Dist. of Columbia	_____ Michigan	_____ Rhode Island
_____ Florida	_____ Minnesota	_____ Tennessee
_____ Georgia	_____ Montana	_____ Texas
_____ Hawaii	_____ New Hampshire	_____ Virginia
_____ Illinois	_____ New Jersey	_____ Washington
_____ Indiana	_____ New Mexico	_____ Wisconsin

[New York - Unjust Enrichment]

Question 10: Has Plaintiff, the State of New York, proven by a preponderance of the evidence that Novartis obtained money from the New York State Medicaid Program under such circumstances that Novartis should not in good conscience be entitled to retain it?

YES _____ NO _____

If you answered "No" to the above, proceed to question number 11.

If you answered Yes in response to Question 10, please indicate the total dollar amount of money that Novartis is liable to repay to the State of New York.

___ [Insert Number]

[New York Executive Law § 63-c]

Question 11: Has Plaintiff, the State of New York, proven by a preponderance of the evidence that Novartis caused the submission of false or fraudulent claims for payment to the New York State Medicaid program, and thereby obtained money from the New York State Medicaid program without right?

YES _____ NO _____

If you answered "No" to the above, then you have completed this form.

If you answered Yes in response to Question 11, please indicate the total dollar amount of money that Novartis obtained without right by causing the submission of false or fraudulent claims to the New York State Medicaid program?

___ [Insert Number]